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Application No. 09/726,032
Amendment dated June 26, 2003
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REMARKS/ARGUMENTS

Claims 1 to 20 remain in the application. Claims 21 to 32 have been withdrawn in the election.

Claims 4 to 5 and 15 have been amended to correct the scientific numeral representation as requested by the Examiner.

The Examiner had rejected claims 1 to 20 as being indefinite. These claims have been amended to overcome the indefiniteness rejections. In particular, claims 1 and 12 have been amended to specify that the composition and method is for treating soft surfaces. Claims 1, 5, 6, 7, 11, 16, and 17 have been amended to provide proper antecedent support for the terms utilized. Claim 10 which had been objected to by the Examiner as being of improper dependent form, has been amended to depend from claim 3, although it's Applicant's belief that the original claim did further limit claim 8, as claim 8 was directed to adhering agents being selected from either fluorochemicals or stain-blocking chemicals, while claim 10 specified that the adhering agents were fluorochemicals. Claim 19 has been amended to depend from claim 14.

The Examiner had rejected claims 1 to 8 and 12 to 17 under 35 U.S.C. 102(e) as being anticipated by Lin et al. Applicant respectfully traverses this rejection.

Lin et al teach a method and composition for controlling odor on hard surfaces, such as, bathroom fixtures, sinks and toilet bowls. The composition includes bacterial spores, a sanitizing composition comprising isopropyl alcohol and surfactant or blends of surfactants.

In contrast, the method and compositions for the present invention are directed to controlling odor associated with deposits on soft surfaces, such as carpet and other fibrous materials. The requirements for a cleaning or odor control composition for use with soft material are entirely different than those of a composition for hard surfaces, as the nature of the surfaces are entirely different. It is respectfully submitted that one of skill in the art would not follow the teaching of cleaning compositions for hard surfaces in order to develop a cleaning composition for soft

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surfaces, as many of the components of a hard surface cleaner, such as a sanitizing components and surfactant could irreversibly damage a soft surface. It is also respectfully submitted that the claims of the present application are not identical to the disclosure of Lin et al. Lin teaches the use of sanitizing agents and surfactants which would not be utilized in a soft surface cleaning composition. In addition, there is no teaching or suggestion in Lin of utilizing one or more adhering agents, such that the dormant bacteria may become associated with the surface so that when the surface is subsequently exposed to organic material which can cause odor, the bacteria are capable of becoming active and digesting the organic material on the soft surface.

The Examiner had rejected claims 6 to 7 and 16 to 17 under 35 U.S.C. 103(a) as being unpatentable over Lin. Applicant respectfully traverses this rejection.

The Examiner was of the view that the claims of the application only differ from Lin in that the specific percent amounts are not disclosed. It is respectfully submitted that the nature of the compositions themselves differ between Lin and that of the present application. As discussed above, Lin is directed to a hard surface cleaning agent including sanitizing agents and surfactants, whereas the present compositions are for controlling odor on soft surfaces and include an adhering agent. It is respectfully submitted that one of the skill in the art would not be led to develop the composition of the present invention from the teaching of Lin, as one would not look to a hard surface cleaning agent when developing cleaning or odor controlling compositions for soft surfaces. In addition, Lin does not suggest or teach the use of an adhering agent.

The Examiner had rejected claims 5 and 8 to 11 and 18 to 20 under 35 U.S.C. 103(a) as being unpatentable over WO 97/43385 or Lin both in view of Horney et al and Blyth et al and Vinod. Applicant respectfully traverses this rejection.

The WO patent teaches detergent compositions comprising a combination of different α -amylases for controlling odor in cleaning compositions. Lin as discussed above, is directed to a hard surface cleaner comprising a bacterial preparation in combination with a sanitizing composition and a surfactant. Horney et al is directed to a formulation for controlling odor emanating from sewage where the composition includes a barrier forming solvent carrier containing an odor masking agent and

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bacterial preparation for controlling the odor. Blyth et al describes a stain blocker for use in producing stain resistant nylon fiber for carpet and Vinod also describes a stain block chemical for treatment of nylon carpet fiber. However, it is respectfully submitted that the references would not be combined in the manner suggested by the Examiner and even if they were combined, which is not admitted, but denied, they would not lead one of skill in the art to the invention as claimed in the claims of the application.

Obviousness is determined by "what the combined teachings of the references would have suggested to those of ordinary skill in the art". *In re Keller*, 208 USPQ 871, 881. Obviousness "cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination" and "teachings of references can be combined only if there is some suggestion or incentive to do so." *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 221 USPQ 929, 933.

"In order to establish obviousness, it is necessary for the examiner to present *evidence*, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art *would have been led* to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention." *Ex parte Levengood*, 28 USPQ2d 1300, 1301.

That one can *reconstruct* and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make the claimed invention. ... Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done." *Ex parte Levengood*, 28 USPQ2d 1300, 1301.

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As discussed above, the primary reference Lin, is directed to a cleaning composition for hard surfaces comprising bacterial preparation, sanitizing chemical and surfactant. The second primary reference cited by the Examiner, the WO patent, describes a detergent composition for control of odor containing a combination of α -amylases. There is no teaching or suggestion in this patent of including bacterial spores in the cleaning composition. Horney teaches the use of a composition to control odor in sewage by providing a odor suppressing agent in an oil carrier and bacteria to aid in the digestion of the odor controlling material in the sewage. It is respectfully submitted however, that if one of skill in the art combined Lin and Horney, one would at best be led to include the odor suppressant of Horney in the composition of Lin containing the sanitizing agent and surfactant. This combination however, would not lead one of skill in the art to the method and compositions of the present invention for odor control for soft surfaces, where the composition includes a preparation of dormant bacteria and an adhering agent such that the dormant bacteria becomes associated with the soft surface.

Similarly, combining the WO patent with Horney or Lin would at best lead to the addition of α -amylase enzymes to the compositions of Horney or Lin. One of skill in the art would not be led to the method or composition of the present invention for use in odor control of soft surfaces.

Blyth and Vinod are both directed to stain blocking chemicals for treating carpets to provide them with stain resistance. There is no teaching in Blyth or Vinod or in the other references cited by the Examiner that would lead one of skill in the art to combine Blyth and Vinod with the other references. They are from such a different area of art that one of skill in the art of formulating odor controlling compositions would not look to stain resistance of carpet for guidance. It is respectfully submitted that the Examiner has merely located references describing the various individual components of the present invention without establishing the motivating force to arrive at the present invention, an approach that was clearly rejected in *Ex parte Levengood*, 28 USPQ2d 1300, 1301.

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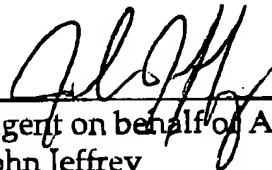
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Accordingly, it is respectfully submitted that in view of all the forgoing, the claims of the application are patentable over the cited prior art. We look forward to receiving results of further examination in this application.

Respectfully submitted,



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TOTAL P.11

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